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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,577	12/26/2001	Harald Jakob	215641US0X	7950

22850 7590 06/04/2003

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EXAMINER	
KUHAR, ANTHONY J	

ART UNIT	PAPER NUMBER
1754	7

DATE MAILED: 06/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/025,577	JAKOB ET AL.	
	Examiner	Art Unit	
	Anthony J Kuhar	1754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-20 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20 recites the limitation "the particles". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Mohr '148.

Mohr '148 teaches in column 2, lines 10-19 passing sodium percarbonate into a zone where air is heated between 70 and 150 C. Example 1 teaches a residence time of 30 minutes.

Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by EP 487,256.

EP 487,256 teaches in example 1 drying sodium percarbonate at 80 C for 10 minutes in a fluidized bed, where the air is continuously replaced.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kegelart '663.

Column 3, lines 44-50 of Kegelart '663 teach drying sodium percarbonate at 55-80 C using a fluidized bed dryer. The subject matter as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made to have selected the overlapping portion of the range disclosed by the reference because overlapping ranges have been held to be a prima facie case of obviousness, in re Malagari, 182 USPQ 549.

Kegelart '663 does not teach the time the sodium percarbonate is dried. However, it appears that drying times of greater than two minutes are employed from the examples. It would have been obvious to one of ordinary skill in the art at the time the invention was made to determine the optimum heating time because it is not inventive to determine the optimum or workable range which only requires routine experimentation, see In re Boesch, 205 USPQ 215.

Claims 1, 5-11, and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakagawa '977.

Nakagawa '977 teaches in column 1, lines 26-62 teach thermal treatment of sodium percarbonate at 110-135 C for 5-60 minutes. The subject matter as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made to have selected the overlapping portion of the range disclosed by the reference because overlapping ranges have been held to be a prima facie case of obviousness, in re Malagari, 182 USPQ 549. Example 1 teaches this process is performed in a fluidized bed and air is continuously replaced.

Nakagawa '977 does not teach this thermal treatment is immediately subsequent to a drying step after production of the sodium percarbonate. However, sodium percarbonate that Nakagawa treats has already been produced, and it is well known in the art that production of

sodium percarbonate involves a drying step. It also appears that the sodium percarbonate of Nakagawa has already been dried since it would be moist if it wasn't, and Nakagawa does not state that this thermal treatment process is performed on a moist sodium percarbonate. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art the burden of proof is shifted to the applicant to establish that their product is patentably distinct not the examiner to show the same process of making, see In re Brown, 173 U.S.P.Q. 685, In re Fessman, 180 U.S.P.Q. 324, In re Spada, 15 USPQ2d 1655, In re Fitzgerald, 205 USPQ 594, and MPEP 2113.

Claims 1-7, 11-15, and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '906.

JP '906 teaches in the abstract heat treating sodium percarbonate at 70-110 C for 10-120 min. The subject matter as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made to have selected the overlapping portion of the range disclosed by the reference because overlapping ranges have been held to be a prima facie case of obviousness, in re Malagari, 182 USPQ 549.

JP '906 does not teach this thermal treatment is immediately subsequent to a drying step after production of the sodium percarbonate. However, sodium percarbonate that JP '906 treats has already been produced, and it is well known in the art that production of sodium percarbonate involves a drying step. It also appears that the sodium percarbonate of JP '906 has already been dried since it would be moist if it wasn't, and JP '906 does not state that this

thermal treatment process is performed on a moist sodium percarbonate. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art the burden of proof is shifted to the applicant to establish that their product is patentably distinct not the examiner to show the same process of making, see In re Brown, 173 U.S.P.Q. 685, In re Fessman, 180 U.S.P.Q. 324, In re Spada, 15 USPQ2d 1655, In re Fitzgerald, 205 USPQ 594, and MPEP 2113.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brichard '669.

Brichard '669 teaches in column 4, line 67 to column 5, line 23 fluidizing sodium percarbonate particles using a flow of air heated to 55 to 120 C. Column 5, lines 24-27 also teach a coating agent which would coat the particle. Brichard '669 teaches in table 1 times of 10-20 minutes.

Brichard '669 does not teach this thermal treatment is immediately subsequent to a drying step after production of the sodium percarbonate. However, sodium percarbonate that Brichard '669 treats has already been produced, and it is well known in the art that production of sodium percarbonate involves a drying step. It also appears that the sodium percarbonate of Brichard '669 has already been dried since it would be moist if it wasn't, and Brichard '669 does not state that this thermal treatment process is performed on a moist sodium percarbonate. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner

has found a substantially similar product as in the applied prior art the burden of proof is shifted to the applicant to establish that their product is patentably distinct not the examiner to show the same process of making, see In re Brown, 173 U.S.P.Q. 685, In re Fessman, 180 U.S.P.Q. 324, In re Spada, 15 USPQ2d 1655, In re Fitzgerald, 205 USPQ 594, and MPEP 2113.

Claims 1, 2, 5-12, and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '103.

The machine translation of JP '103 teaches at the top of the second page flowing air at 110-135 C for 5-60 minutes across sodium percarbonate using a rotary air drying. The subject matter as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made to have selected the overlapping portion of the range disclosed by the reference because overlapping ranges have been held to be a prima facie case of obviousness, in re Malagari, 182 USPQ 549.

The middle of the machine translation also teaches that fluidized beds have been employed to perform this process previously; thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the process of JP '103 using a fluidized bed dryer rather than a rotary dryer because it is known as prior art to do so.

JP '103 does not teach this thermal treatment is immediately subsequent to a drying step after production of the sodium percarbonate. However, sodium percarbonate that JP '103 treats has already been produced, and it is well known in the art that production of sodium percarbonate involves a drying step. It also appears that the sodium percarbonate of JP '103 has already been dried since it would be moist if it wasn't, and JP '103 does not state that this thermal treatment process is performed on a moist sodium percarbonate. Any difference

imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art the burden of proof is shifted to the applicant to establish that their product is patentably distinct not the examiner to show the same process of making, see In re Brown, 173 U.S.P.Q. 685, In re Fessman, 180 U.S.P.Q. 324, In re Spada, 15 USPQ2d 1655, In re Fitzgerald, 205 USPQ 594, and MPEP 2113.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony J Kuhar whose telephone number is 703-305-7095. The examiner can normally be reached on 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stan Silverman can be reached on 703-308-3837. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

AK

AK
May 29, 2003

STEVEN BOS
PRIMARY EXAMINER
GROUP 1100